A CRITICAL ANALYSIS OF THE PROVISIONS OF EMPLOYEES PROVIDENT FUND AND MISCELLENEOUS PROVISIONS ACT, 1952

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ABSTRACT

Employees Provident Fund Act was passed in India to provide social security and financial assistance to employees. EPF Act provide financial security, encourage employees to save for retirement, members can withdraw funds for specific expenses like education, marriage, or medical treatment, and even members receive interest on their contributions, which accumulates upon retirement, resignation, or death. Act is applicable to the area defined under the Act and also the establishments engaging 20 or more employees in it. It also stated that, once a member of provident fund, would always remain member of provident fund. Main misconception arise about the definition of workers under PF Act, contribution of employer and employees, which category of worker would fall down under the Act, etc. There are some practical difficulties fall down under EPF schemes such as calculation of contribution of employer and employee amongst the wages of workers, tax saving purpose, liability of employer, long term profitability, etc. Thus, the main misconceptions regarding workers cover under Act, employer-employee contribution, EPF schemes, etc. are verified, clarified and modified by High court and Supreme court through their judgments and make applicable the same.

KEYWORDS: EPF – Employees Provident Fund, MP – Miscellaneous Provisions, Hon'ble – Honorable, EPFO – Employees' Provident Fund Organization, EPS – Employees' pension scheme, EDLI - Employees' Deposit Linked Insurance

INTRODUCTION

The Employees' Provident Fund came into existence in 1951 with the enactment of the Employees' Provident Fund Ordinance. The EPF bill was introduced in parliament in 1952 to provide provident funds to working employees, in factories, establishments and private institutions. The EPF ordinance was later replaced by the EPF Act, 1952. The law governing EPF is now called the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. This Act is applicable throughout India except J & K. Employees Provident Fund and Miscellaneous Provisions Act, 1952 is a benevolent piece of legislation enacted to provide social security in forms of provident fund, pension and Insurance to all the employees who are employed for wages.

Structure of EPFO:

The Act and all its schemes are administered by a board called the Central Board of Trustees. The board comprises representatives of both central and state governments, employers and employees. All the Labor laws come under concurrent list of the Indian Constitution of India, so both state and central government have power to make rules. Under the Ministry of Labor and Employment, Government of India, the EPFO manages the 3 schemes,

- EPF schemes, 1952
- EPS, 1995
- EDLI Scheme, 1976

EPFO's Work:

- Implementation of EPF Act across the country
- Updating records
- Maintenance of personal accounts
- Settlement of claims
- Ensuring prompt pension payment
- Investing money
- Ensuring easy operation of accounts of EPF

Benefits of EPF scheme:

- The EPF scheme enables individuals to save money for a longer period
- Instead of investing huge amounts, deductions are made from employee's monthly salary
- It provides financial assistance to employees during unexpected circumstances
- A person can save money for his retirement
- A fund can be used during unemployment
- A person can withdraw his EPF fund while leaving/ resigning or any other case
- In case of death of employee, family get the advantage from the fund
- Other benefits like disablement, retrenchment, etc. cases employees have their fund to utilize

Applicability of Act:

EPF & MP Act applies to an establishment engaging 20 or more employees is covered under the Act. The wage ceiling has been notified as Rs.15000 (w.e.f. 01/09/2014). Therefore, a person drawing basic wage (as defined under sub-section (b) of Section 2) less then Rs.15000/- is to cover under the Act and thereby contribution of 12% becomes mandatory from the employer as well as employee. It should be kept it mind that 'Once a member of Provident Fund, would always be a member of the Provident Fund', thereby a person cannot cease to be a member of Provident Fund once his basic salary/wages has crossed the prevailing wage ceiling. A person drawing more than Rs.15000 can also contribute towards Provident Fund, but voluntarily. However, the contribution of the employer of 12%, in such cases, shall be limited to Rs.15000 only, irrespective of the salary.

Misconceptions of Employers:

There are several misconceptions of Employers with regards to the Applicability of the Act to the category of workers, wherein it would be difficult to figure out whether the particular category of workers would be an employee under the Act and would be liable for contribution as well as counting of employees for applicability of the Act. The Major misconception found in Employer is that the employer does not consider employees/workers of contractors while determining whether the employer is employing 20 employees or not. The workers of the contractor, who is employed for permanent nature of the work would be counted in determining the total strength, however, employment obviously would not include employment of a few persons for a short period on account of some passing necessity or some temporary emergency beyond the control of the establishment. The establishment engaging contractor would be termed as Principle-Employer and would have liability of contribution in terms of Para 30 of the Employees Provident Fund Scheme, 1952. Thus, an establishment having more than 20 employees, direct or indirect (contractors' employees), would have to be counted and the act shall be applicable to such establishments and contribution towards Provident Fund shall have to be paid by the Employer/Principal-Employer.

Now, once the act is applicable to the establishment, it is observed that the establishment would inadvertently miss out one of the most important facets that is, which workers are to be considered for contribution towards the Provident Fund! Without evaluating the said aspect, as a routine procedure, the employer would cover and remit contribution towards employees/workers employed through the employer on permanent basis and would skip the workers employed through contractors, part-time workers, apprentice workers, security staff, etc.

In a nut-shell employees/workers that are to be covered or not is to be determined by the definition. The language used in the Clause (b) of sub-section (3) of Section 1 does not give clear indication of which employees/workers are to be counted with regards to employing 20 or more persons. There remains a serious ambiguity as to, the person so employed by the establishment for any purpose whatsoever and for however short duration it may be or may be for some specified minimum period, whether they would be covered under the Act or not. The Hon'ble the apex court in Regional Provident Fund Commissioner, *Andhra Pradesh Versus T.S.Hariharan reported in 1971 SCC (2) 68*, observed that employment of a few persons on account of some emergency or for a very short period necessitated by some abnormal contingency which is not a regular feature of the business of the establishment and which does not reflect its business prosperity or its financial capacity and stability from which it can reasonably be concluded that the establishment can in the normal way bear the burden of contribution towards the provident fund under the Act would not be covered by the definition. However, the question of which category of worker would fall under the definition would have to be determine on its own peculiar facts, considering the approach pointed out by the Hon'ble the Apex Court in the said judgment.

Practical Difficulty:

The practical difficulty faced by the employer would be at the time when, due to misconceptions, inadvertently, the contribution towards Provident Fund with regards to particular category is not made and at the times of Inspection, the Enforcement Officer, may raise query with regards to non-remittance of Provident Fund towards particular category. The employer by all means would try to convince and satisfy the query of the Enforcement officer, however, the Enforcement officer may not pay heed to such reply and thereby, saddle the employer with liability to make the payment towards Provident Fund. However, at that stage the total liability of PF Contribution would come to 25 % wherein 12 % would be Employers share which is to be borne by the employer and other 12 % would be employees share, which again would have to be borne by the employer, since the deduction from the employee were not made at the relevant time. Remaining 1 % would be the Administration Charges levied as per the provision of the Act. Moreover as per the EPF Scheme, the contribution is to be paid within 15 days of the close of every month. Whereas, late payment would attract Damages and interest. Interest is levied at the rate of 12 % per annum whereas the damages from 5 % to 25% per annum are levied on the basis of delay, wherein, if the delay in remitting Provident Fund Contribution is more than 6 months than the damages shall be levied at the rate of 25% per annum of the amount of arrears. Thus, for a small inadvertent mistake, the total liability of the employer may go upto the tune of 34.25 % per annum of the basic wage.

Second most practical difficulty faced by the medium and small-scale establishments are that at the time of finalization of the Annual Returns, to curtail the Net-Profit and save Income-Tax, un-incurred expenses are booked under the head of Labor Expenses, Dhangai Expenses, transportation expenses, etc. Thereby, saving maximum of 30 % Income-Tax, however, at the time of inspections under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the Income-Tax benefit taken would turn out to be a curse, as this head would in turn question about the number of workers employed under the said head and more particularly the wages paid to them. Thereby, determine the PF contribution towards the same alongwith the damages and interest. As stated above, liability towards Provident Fund may reach upto 34.25 % per annum of the total basic wages/salary, which ultimately would be far much than the Income-Tax saved. Thus, it can be said that it would be much advisable to pay Income-tax then book un-incurred Expenses under the head mentioned above which may in long-term be profitable.

Appeal Provisions:

The amount of escaped contribution, if determined by the appropriate authority, is appealable. But, for admitting the appeal, 75% of the amount determined by the Appropriate Authority, is to be deposited before the Court as provided under Section 7O of the Act, however, the said amount can be waived or reduced by the court by recording the reasons for the same. Summarizing the orders passed by the Appellate Authorities under Section 7O, the amount is reduced to a very smaller extent. Thus, the employer is saddled upon an additional financial burden, until the version of the employer gets approval from the concerned tribunal.

CONCLUSION

The EPF Act safeguards the interest of employees by creating a legal framework for provident funds. In order to guard against possible exploitation and guarantee that workers receive their rightful benefit from the employer who are required to make their contribution. The Practical Approach of an employer should be to prima-facie determine which employees/workers shall be covered under the Provident Fund. Various High Courts and Supreme Courts have held which employees/ workers are to be considered and covered under the Employees Provident Fund and Misc. Provision Act and considering the said judgments, the contribution shall be remitted accordingly. Moreover, the un-incurred expenses may not be booked under the head of Labor Expenses, Dhangai Expenses, transportation expenses, etc. in order to save Income-tax.

REFERENCES

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